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10/088,913	05/07/2002	Michael O. Thompson	0104-0704PUS1	8909
2292 7590 05/01/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER HUR, JUNG H				
ART UNIT 2824		PAPER NUMBER		
NOTIFICATION DATE 05/01/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL O. THOMPSON,
RICHARD WOMACK,
JOHAN CARLSSON
AND GORAN GUSTAFSSON

Application No. 10/088,913
Technology Center 2824

Mailed: April 30, 2009

Before DELORES LOWE, *Review Team Paralegal*
LOWE, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on March 31, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

APPEAL BRIEF, GROUNDS OF REJECTION

A review of the file finds that the grounds of rejection of the claims as provided in the Appeal Brief filed October 14, 2008 under the heading “Grounds of rejection to be reviewed on appeal” is unclear and/or is not consistent with the grounds of rejection of claims of record. The grounds of rejection of the claims as provided in the Appeal Brief must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each Grounds of rejection to be reviewed on appeal must be identified.

A review of the last Office action, including any mailed Advisory Action(s) finds that claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuroda (U.S. Pat. No. 5,487,029) in view of Clemons (U.S. Pat. No. 4,599,709) as applied to claim 1 above, and further in view of Dierke (U.S. Pat. No. 5,734,615); whereas appellants have not indicated the grounds of rejection of these claims. Correction of the Grounds of rejection to be reviewed on appeal for all claims is required.

On December 26, 2008, an Examiner's Answer was mailed. On page 2, under the heading "Summary of Claimed Subject Matter" the examiner stated that "The summary of claimed subject matter contained in the brief is deficient" However, there is no indication that the Appellants responded to the Examiner's Answer.

Correction is required. MPEP § 1205.03 states:

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) to hold the Appeal Brief filed on October 14, 2008 defective;
- 2) notify Appellants to file a paper properly addressing the Grounds of rejection of all claims, and summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v); and
- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

/DAL/

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